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EXAMINER

HSIEH, S  
ART UNIT

PAPER NUMBER

2837

DATE MAILED: 03/17/00

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-12 is/~~are~~ pending in the application.
- ☐ Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-12 is/~~are~~ rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

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1. Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, "said recess" and "said bottleneck" lack antecedent basis.

Claim 8, "said exterior surface" lacks antecedent basis.

Claim 8, the claim language "said bulbous end comprises said first shell part and a portion of said second handle part" is indefinite and confusing. According to the specification the shell part and the handle part are separate parts. They are joined together to form a maraca. The shell part does not comprise a portion of the handle part.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7-10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kralik et al. (5,808,215) in view of Zadek (2,364,581) and Iijima (3,735,076).

Regarding claims 1, 7, 10, and 12, Kralik et al. disclose a shaker having a first part comprising a hollow shell (42 in Fig. 4) with pellets (22) therein joined to a second part comprising an elongated handle (44 in Fig. 4).

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The differences between Krelík et al.'s shaker and the claims are that claims 1 and 10 recite that said handle part is fabricated of flexible material; claim 7 recites that said flexible handle comprises flexible plastic selected from the group comprising polyvinyl chloride and Santoprene; and claim 12 recites that said flexible material is rubber.

Zadek teaches a shaker handle (18) fabricated of flexible material (col. 2, line 10) and Iijima teaches using elastic or resilient material such as polyvinyl chloride, rubber (col. 2, lines 60-65) to absorb shock for musical instrument (Abstract). It would have been obvious to a person having ordinary skill in the art to modify Kralík et al.'s shaker as taught by Zadek and Iijima to include said handle fabricated of flexible material comprising polyvinyl chloride and rubber for the purpose of absorbing shock.

Regarding claim 2, Kralík et al. discloses the first shell part comprises a molded shell (col. 2, line 10; col. 3, lines 22-23) having a truncated end portion (24 in Fig. 3 and Fig. 4) and a bottleneck (48 in Fig. 4) extending from said end portion.

Regarding claim 3, Kralík et al. disclose the first said shell part is provided with a cap member (52 in Fig. 4) closing said bottleneck and retaining said pellets in said first part.

Regarding claim 4, Kralík et al. disclose said second handle part is provided with a recess (46 in Fig. 4) for receiving said bottleneck of said first part (Fig. 4).

Regarding claim 8, Kralík et al. disclose an exterior surface (Fig. 4 shows an exterior surface of the shaker when 42 and 44 are joined together) forms a maraca (col. 1, line 6) having a

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bulbous end (42), wherein said bulbous end comprises said first shell part (42) and joins a portion of said second handle part (when 48 of shell 42 is inserted into 46 of the handle).

Regarding claim 9, Kralik et al. disclose said first shell part is fabricated of rigid plastic (col. 3, line 41).

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kralik et al. in view of Zadek and Iijima as applied to claim 1 above, and further in view of Stewart (4,850,928).

The difference between Kralik et al. in view of Zadek and Iijima's shaker and claim 6 is that claim 6 recites said second handle part is provided with a bore though the end of said second handle part distal to the joint with said first part.

Steward teaches a bore (67) though the end of a handle part (65) of a rattling device for receiving a cord. It would have been obvious to a person having ordinary skill in the art to modify Kralik et al. in view of Zadek and Iijima's shaker as taught by Stewart to include a bore though the end of said second handle part distal to the joint with said first part for the purpose of receiving a cord.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kralik et al. in view of Zadek as applied to claim 1 above, and further in view of Desmond (2,399,333).

The difference between Kralik et al. in view of Zadek and Iijima's shaker and claim 11 is that claim 11 recites said handle comprises a second portion.


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Desmond teaches a handle (14) with a second portion (16) for gripping. It would have been obvious to a person having ordinary skill in the art to modify Kralik et al. in view of Zadek and Iijima's shaker as taught by Desmond to include a handle with a second portion for the purpose of gripping.

6. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claim 5 is allowable over the prior art for at least the reason that the prior art fails to reasonably teach or suggest a recess in the handle part forms a closure for a bottleneck of said shell part as set forth in the claimed combination.

8. Any inquiry concerning this communication should be directed to (David) S.Y. Hsieh at telephone number (703) 308-1031.

  
Shih-yung Hsieh  
Patent Examiner  
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